

LICENSE

This License (hereinafter “the License”), made this _____ day of February, 2016, by the **Amherst Pelham Regional School District, acting by and through its School Committee (hereinafter call “the District”)**, to the **Town of Amherst**, acting by and through its Select Board (known hereinafter “the Licensee”).

WITNESSETH:

WHEREAS, the District desires to memorialize an understanding with the Licensee to govern the Licensee’s use of Suite 1 of the Amherst Pelham Regional Middle School building (the “Building”) located at 170 Chestnut Street, Amherst, MA 01002 (the “Property”), during the period commencing on April 1, 2016 and ending on June 30 , 2026. Use of all space is subject to the School Committee's reasonable guidelines.

NOW, THEREFORE, it is mutually agreed between the parties hereto as follows:

1. **SCOPE OF LICENSE/CONDITIONS/TERMINATION/RENEWAL**

A. The District hereby grants to Licensee, subject to the conditions outlined herein and subject to the payment of license fees and other fees as outlined herein, a license for the use of Suite 1 in the Building, and a non-exclusive right to use any and all common areas and facilities, including, without limitation, any hallways, corridors, entryways, restrooms, pathways, walkways, driveways and parking areas on the Property (with the Rooms, the “Licensed Premises”), for the license period, which shall commence on April 1, 2016 and which shall terminate on June 30, 2026. This License shall be used solely for office space for the Licensee’s department on Leisure Services and Supplemental Education and/or any other Town board, department, and/or commission (any, a “Department”). The District acknowledges that the public has access to the Licensed Premises during such times as the Department is open for business and that Licensee’s use is not expected to unreasonably interfere or conflict with use of the remaining Property for school or community events held at the Property, including District Programs throughout the calendar year. . If the District Business Office anticipates such unreasonable interference, the District shall inform the Licensee of the same in writing, and both parties agree to utilize good faith and best efforts to resolve the period of such interference/conflict.

B. The effective period of this License shall be for the term stated above; provided, however, that this License is subject to the continued sole consent of the District. Notwithstanding the foregoing, the District agrees to provide Licensee at least six (6) months’ prior written notice thereof. The Licensee may extend this License by sending

the District written request therefor and obtaining the District's consent, which may be withheld at the District's sole discretion.

C. The District shall maintain the Property, including, without limitation, the Building and the building systems thereof, the Licensed Premises, and the exterior areas, in good, clean, safe and operable condition during the license period. If there is a need to repair any such facilities, then the District will notify the Licensee in writing of the time during which such facilities will not be available for Licensee's use during this time and shall use good faith efforts to minimize the period that such Licensee is unable to use the Licensed Premises or any portion thereof. If school is cancelled due to weather or there are other reasons necessary to close school, then the District will notify the Licensee if any of the facilities will not be available during this time. The District will notify the Licensee by e-mailing and calling the Licensee's cell phones. Notwithstanding the foregoing, the Licensee may continue to use the Licensed Premises and other facilities for the purposes set forth herein.

The District shall provide general cleaning/maintenance and security at the facilities, including the Licensed Premises.

The Licensee will not make any modifications or changes to the facilities other than minor modifications necessary or convenient to enable Licensee to use the Licensed Premises for the purposes set forth herein.

In the event that Licensee is unable to use the Licensed Premises for more than seven (7) days, whether due to repairs, condemnation, fire or other casualty, or any reason beyond Licensee's reasonable control, the District agrees to abate the licensee fee equitably during such periods.

D. Licensee shall assume full responsibility for transporting equipment to and from the facilities. The Licensee shall also be responsible for all damage to the facilities, which is caused by the Licensee, its students, agents and employees. If District equipment is damaged and the Licensee and the District agree that the Licensee is responsible for the damage done to District equipment, then the Licensee will repair the damaged equipment to its condition prior to such damage. Also, the Licensee agrees to repair any damage to the facilities if the District and the Licensee agree that the Licensee is responsible for the damage to their condition prior to such damage. Should the Licensee's equipment be damaged by District constituents, then the District shall reimburse the Licensee for expenses relating to repair/replacement of damaged equipment.

The Licensee will supervise facilities used by its programs.

Hallways and lobby areas will not be used for product sales or any other use beyond intended purpose.

Permanent signage will not be permitted unless agreed upon by the District and the Licensee. The Licensee shall obtain approval from the District Business Office before temporary signage can be displayed.

- D. As expressed earlier in this License, the Licensee's use of the property shall be subject to the following conditions:
1. The Licensee shall perform an annual inspection to the Licensed Premises, and shall advise the District of any unsafe/hazardous conditions at the Licensed Premises.
 2. The Licensee shall ensure as follows: (1) that the Licensee's use of the Licensed Premises is safe and reasonable; (2) that Licensee shall not conduct any unlawful activity on or near the Licensed Premises and shall not allow any of its licensees to engage in any unlawful activity on or near the Licensed Premises; 3) that the Licensed Premises are reasonably maintained; and (4) that District is immediately notified of any necessary repairs to the Licensed Premises. The Licensee also agrees as follows: (1) to keep the Licensed Premises clean and neat; and (2) to ensure that the cleanliness of the Licensed Premises complies with applicable federal, state, and local health standards. The District shall supply all water, electricity, sewer, heating and custodial services to the Licensed Premises, which shall remain at all times under the ultimate control and ownership of the District. The Licensee's use of water, sewer, heating and electricity and the custodial services in conjunction with the Licensed Premises shall not be measured separately, but shall be included with the license fee.
 3. The Licensee shall avoid scheduling activities that would interfere in any way with school activities.
 4. The Licensee shall not improve, repair, alter, restore, construct, or reconstruct the Licensed Premises, or permit any improvements, repairs, alterations, restorations, constructions, or reconstructions at or to the Licensed Premises, without the approval of the District, not to be unreasonably withheld. The decisions regarding whether improvements, repairs, alterations, restorations, constructions, and/or reconstructions should be made to the Premises lie solely with the District, which, at all times retains sole ownership and ultimate control thereof.
 5. This License invests no property interests or contractual rights in the Licensee.
 6. The Licensee shall comply with all applicable federal, state, and local laws, rules, and regulations, including, without limitation, applicable CORI

(Criminal Record Offender Information) and SORI (Sex Offender Registry Information) requirements.

7. The Licensee shall use good faith efforts to appear for conferences with the Superintendent or his/her designee when requested.

2. LICENSE FEES

The Licensee shall pay the following license fees to the District for the use of the Licensed Premises to cover the costs of the District:

For each fiscal year of the License, the Licensee shall pay the fixed sum of Ten Thousand Two Hundred Eighteen Dollars and 00/100 cents (\$10,218), to be paid in twelve (12) equal installments of Eight Hundred Fifty-One dollars and 50/100 cents (\$851.50) each, due and payable by cash or certified check to the District on or before the fifth (5th) day of each month. This fee will be prorated in FY16 according to the actual move-in date.

This License fee is subject to a yearly review. All changes in fees will be determined by March 1st of the preceding fiscal year. There will be no change to the license fee for fiscal year 2017. The license fee is determined by dividing the square feet of the licensed premises by the square feet of the middle school, times the per square foot budgeted building costs of the middle school which include heating, electricity, water/sewer, custodial, and liability insurance. The fee structure may be amended in the future if the middle school and high school consolidate into one building or if the licensee requires additional services (i.e. pool access, technology support).

Licensee shall also pay all taxes assessed by the taxing municipality against the Licensee, including, without limitation, those upon occupancy, in accordance with the Massachusetts General Laws, including without limitation, M.G.L. c. 59, §2B. Licensee and the District acknowledge and agree that the Town of Amherst is not subject to such taxes.

3. INSURANCE AND INDEMNIFICATION/NO PERSONAL LIABILITY

The Licensee shall provide and maintain throughout the term of the License and any extension or renewal thereof the following insurance with companies that are authorized and licensed in the Commonwealth of Massachusetts to issue policies for the coverages and limits so required.

a. Workers' Compensation Insurance as required by the laws of the Commonwealth of Massachusetts and employer's liability insurance in the amount of \$500,000/\$500,000/\$500,000.

b. Commercial General Liability Insurance, \$1,000,000 each occurrence and \$2,000,000 aggregate limit. Commercial General Liability insurance shall include personal injury liability, broad form property damage liability, products/completed operations liability and broad form contractual liability.

c. Automobile Liability Insurance - Combined single limit of \$1,000,000.

d. Excess Liability Insurance, Umbrella Form - \$1,000,000 each occurrence and \$2,000,000 aggregate, which shall be following form, providing coverage over commercial general liability insurance, automobile liability insurance, and employer's liability under workers' compensation insurance.

e. The District shall be named as an additional insured on each such policy of Commercial General Liability Insurance, and Automobile Liability Insurance.

f. All certificates and policies shall contain the following provision:

"Notwithstanding any other provision herein, should any of the above policies be cancelled or materially amended before the expiration date thereof, the issuing company will mail thirty (30) days prior written notice thereof to the named certificate holder and to the District, before such cancellation or amendment shall take place."

g. Certificates evidencing such insurance in five (5) copies shall be furnished to the District at the execution of this License. Such certificates shall not merely name the types of policy provided, but shall specifically refer to this License and shall state that such insurance is as required by this License.

h. The Licensee shall also be required to provide to the District with its proof of insurance coverage endorsements or riders to the policies of commercial general liability insurance and automobile liability insurance, which indicate that the District is named as an additional insured on each such policy.

i. No insurance shall be obtained from an insurer which:

- (1) is not licensed to sell insurance in the Commonwealth of Massachusetts; or
- (2) is not authorized to provide insurance as an excess or surplus lines insurer, and does not have a current Best's rating of A or better.

j. Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of this License and shall operate as an immediate termination thereof.

To the fullest extent permitted by law, the Licensee shall indemnify, defend (with counsel reasonably acceptable to the District), and hold harmless the District and its officers, employees, boards, committees, and agents from and against any and all loss, liability, damages, claims, causes of action, suits, and costs, including, without limitation, reasonable attorney's fees and expert witness fees, to the extent the same is caused in whole or in part by the willful misconduct, negligent act or omission of the Licensee or its officers, employees, or agents in connection with the use of the Licensed Premises.

Neither the District and the Licensee, nor any of its or their officers, employees, boards, committees, commissions, agents and representatives, shall be under any personal obligation or incur any personal liability by reason of this License, the execution thereof or anything relating thereto which arises out of the breach or violation of any provision of this License, or the violation of any Federal, Massachusetts or local statute, ordinance, rule, regulation, order or directive, or which relates to personal injury or property damage suffered by the other or its employees, regarding the subject matter of this License.

4. NOTICES

All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been given or made upon personal delivery or mailing. If mailed, any such mail shall be sent by registered or certified mail, postage prepaid, return receipt requested. Any party may change its address by the procedure set forth herein: All notices initially shall be sent:

(a) If to the District:
Amherst-Pelham Regional School District
ATTN. Superintendent of Schools
170 Chestnut Street
Amherst, MA 01002

With copies to:
Murphy, Hesse, Toomey & Lehane, LLP
300 Crown Colony Drive, Suite 410
Quincy, MA 02169-9126

(b) If to Licensee:

Town of Amherst
4 Boltwood Avenue
Amherst, MA 01002
Attention: Town Manager

5. **SEVERABILITY**

If any provision, or portion thereof, of this License is adjudged to be invalid or unenforceable by final judgment of a court of competent jurisdiction, the remaining provisions shall continue in effect to the extent permitted by law.

6. **ASSIGNMENT**

This License shall not be assigned by the Licensee.

7. **NO THIRD-PARTY RIGHTS**

This License shall not create any rights or benefits in favor of third parties.

8. **AMENDMENT**

This License may be amended only by written consent of the District and Licensee.

9. **GOVERNING LAW**

This License shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, regardless of choice of law principles.

9. **MISCELLANEOUS**

By accepting the terms of this License, the Licensee certifies that it is in compliance and shall remain in compliance with the Commonwealth's Conflict of Interest Law, M.G.L. c. 268A. By accepting the terms of this License, the Licensee certifies that it has accepted them fairly, in a *bona fide* manner, and without fraud or collusion against any person. By accepting the terms of this License, the Licensee certifies, pursuant to M.G.L. c. 62C, §49A, under the pain and penalty of perjury, that it has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support. The Licensee hereby acknowledges that the use of alcoholic beverages, narcotics, and mood altering substances, except under current valid, legal prescriptions, by any officer, employee, agent, or representative of the Licensee is prohibited on District property which is the subject matter of this Contract and during all hours of work under this Contract. Pursuant to Massachusetts General Laws (M.G.L.) c. 270, §22, the Commonwealth of Massachusetts Smokefree Workplace Law, the Licensee, its officers, employees, agents, and representatives shall refrain from smoking and from using tobacco products in any public building in the District.

Licensee shall comply with any and all applicable and sanctioned Criminal Offender Record Information (CORI)/Sex Offender Registry Information (SORI) checks conducted by the District. The Licensee shall comply with all provisions of Federal, Massachusetts and local law, including, without limitation, statutes, ordinances, rules, regulations, orders and directives, as amended, and including, without limitation, the Williams-Steiger Occupational Safety and Health Act, as amended, and related regulations, as amended, in effect throughout the term of this License and any extension or renewal thereof. The Licensee shall not discriminate against or exclude any person from participation herein on grounds of race, color, religious creed, national origin, sex, gender identity, sexual orientation (which shall not include persons whose sexual orientation involves minor children as the sex object), age, genetic information, ancestry, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, and handicap. The previous sentence shall include, but not be limited to, the following: advertising, recruitment; hiring; rates of pay or other forms of compensation; terms; conditions or privileges of employment; employment upgrading; transfer; demotion; layoff; and termination. The Licensee shall take affirmative actions to insure that applicants are employed, and that employees are treated during their employment, without regard to race, color, religious creed, national origin, sex, gender identity, sexual orientation (which shall not include persons whose sexual orientation involves minor children as the sex object), age, genetic information, ancestry, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, and handicap.

IN WITNESS WHEREOF, the District hereby issues this License on this _____ day of _____, 2016.

AMHERST PELHAM REGIONAL SCHOOL DISTRICT

By: _____
Trevor Baptiste,
School Committee Chairperson

Dated: _____

ACCEPTED BY:

LICENSEE

By: _____
Alisa Brewer
Select Board Chairperson

By: _____
Constance Kruger
Select Board Member

By: _____
Douglas Slaughter
Select Board Member

By: _____
Andrew Steinberg
Select Board Member

By: _____
James Wald
Select Board Member

Dated: _____

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